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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,061	03/31/2004	Owen Ralph Baser	558.882	9624

7590 01/27/2005
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EXAMINER

ESTREMSKY, GARY WAYNE

ART UNIT	PAPER NUMBER
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3676

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/816,061

Applicant(s)

BASER, OWEN RALPH

Examiner

Gary Estremsky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 25-34 is/are rejected.
- 7) ☒ Claim(s) 24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of invention of Group II, claims 1-34 readable thereon in the reply filed on 12/16/04 is acknowledged.

Specification

2. The disclosure is objected to because of the following informalities:
At least, Brief Descriptions for Fig's 28 and 29 is required.
Page 24; line 1 - "adapated" should be replaced with -adapted-.
Page 25; line 129 - missing words and/or grammar should be corrected.

Drawings

3. The drawings are objected to because
Reference numeral "430" is missing a lead line in Fig 26.
4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter of claims 12-14, and 25-28 with respect to the elected embodiment of the invention must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

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5. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

6. Claim 19 is objected to because of the following informalities: ***

"position" should be replaced with --positioned--.. Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 12, 13, and 26-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. There is not sufficient disclosure to allow one of ordinary skill in the art to make and use the embodiment of Fig 26 for example to include the features of claims 12 and 13 since those claimed structures are not illustrated or described with respect to the elected embodiment of the invention.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 4-11, 14,15, 18-23, 25, and 29- 34 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 3,865,414 to Schlage.

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Schlage '414 teaches Applicant's claim limitations including : a "door handle" – including 46, a "roller" – 41, a "mount" – 17, an "actuator" – 27, "first surface" – portion of 28 near 41, an "actuator projection" – portion including 33,34 as shown in Fig 3, a "bolt" – including 11.

As regards claim 5, Schlage '414 teaches parts 61,62 corresponding to broad "parallel projections" limitation.

As regards claim 6, 8, Schlage '414 discloses several "fastener(s)" including 66,67 where any one of the fasteners can fairly be described as securing the parts together in an assembly as shown in Fig 6 for example and thereby are shown to be "adapted to secure the actuator to the plurality of parallel projections". Similar consideration applies to broad limitation of claim 8: It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

As regards claims 9, 10, portion of 28 contacted by 41 has a "convex" interior surface and a "concave" exterior (upper) surface as shown in Fig 4 for example.

As regards claim 11, operable parts at 32,33 read on "cam" limitation. Limitation of "lock", as used in the claim, is broad and has been interpreted as mechanically blocking or determining the position.

As regards claim 14, part 14 reads on "pull handle".

As regards claim 15, Fig 8 of Schlage '414 teaches Applicant's claim limitations including : a "door handle" – protruding from the upper left side of the assembly and not shown in full, a "mount" – the part through which the handle's right portion protrudes and having bearing at reference numeral 49, an "actuator" – including the upper portion in connection with the internal portions of the handle and lower portion referenced at 57, "having a roller" – as shown and bearing against part 62, and an "actuator projection" – the lower portion at 57, a "bolt" as previously shown with respect to other embodiments. Examiner notes that embodiment of Fig 8 is arranged such that the actuator (including 62) will essentially translate vertically when the handle is pushed.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 2, 3, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 3,865,414 to Schlage.

As regards claim 2, although the plane of the handle (18) is shown in Fig 5 for example to be at an angle with respect to the plane of the door, it would have been an obvious design choice or engineering expedient for one of ordinary skill in the art at the time of the invention to provide the plane of part 18 to be

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substantially parallel to the door surface to provide for a straightforward pushing latch operation where the examiner takes Official Notice that it is well known in the art to provide doors with push handles that are generally parallel to the plane of the door. One of ordinary skill in the art would have more than a reasonable expectation of success since the proposed modification does not affect the operable portions of the latch.

As regards claim 3, although the reference does not provide absolute dimensions for the latch components, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the handle to door measurement to be "equal to or less than 1 inch" so as to not protrude obtrusively into the interior space where that dimension is consistent with intended use. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

As regards claims 29-34, the 'means' limitations have been interpreted broadly consistent with Applicant's disclosure of various disparate structures corresponding to the functions associated with claimed 'means' without specific reference to the term "means" in the written description.

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Allowable Subject Matter

13. Claim 24 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 2,158,983 to Knoll.

U.S. Pat. No. 2,589,405 to Lang.

U.S. Pat. No. 3,633,389 to Horgan.


U.S. Pat. No. 4,756,178 to Shen.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is 703 308-0494. The examiner can normally be reached on M-Thur 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary Estremsky
Primary Examiner
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